

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: PHILIPS RECALLED CPAP,	)	
BI-LEVEL PAP, AND MECHANICAL	)	
VENTILATOR PRODUCTS	)	Master Docket: Misc. No. 21-1230
LITIGATION	)	
	)	
	)	MDL No. 3014
This Document Relates to: All Actions	)	
	)	
	)	
	)	

**PRETRIAL ORDER #21**

**WITH RESPECT TO SCIENCE DAY ON SEPTEMBER 1, 2022**

**WHEREFORE**, on September 1, 2022, this court will hold “Science Day” to educate the court about the basic medical and scientific issues associated with the devices at issue in this multi-district litigation and *In re: SoClean, Inc., Marketing Sales Practices and Products Liability Litigation, MDL No. 3021* (“MDL 3021”), in an objective format without advocacy,

**WHEREFORE**, the goal of Science Day is to educate the undersigned about how the devices at issue in these MDLs work and the scientific theories underlying the MDLs,

**WHEREFORE**, the purpose of Science Day is not to test the evidence or weigh the strength of any scientific theories, and

**WHEREFORE**, Science Day will be conducted in an effort to familiarize the court with the medical science relevant to this MDL and MDL 3021, so that the undersigned is in the best position possible to manage the MDLs as they proceed,

**NOW**, this 15<sup>th</sup> day of August, 2022, the court **HEREBY ORDERS**:

1. On or before August 22, 2022, the parties shall meet and confer, preferably in person or, if not in person, by videoconferencing to agree about the topics to be addressed at Science Day, which may include:
  - a background on the devices;

- how each device is manufactured;
- the materials used in the device;
- how the device works;
- issues with the materials used;
- the injuries alleged in this litigation;
- medical literature and regulatory information about the devices; and
- other matters the parties select;

2. The parties shall not address liability or attempt to establish claims or defenses in their respective MDL;
3. The Science Day presentations will be transcribed by a court reporter for the court's use only, with costs to be split by the parties. The parties may move to request a copy of the transcript and will have to establish good cause for their request. The transcript, if released, shall be treated as confidential and will be subject to the Confidentiality Order in this case;
4. The court will invite to Science Day the state-court judge the parties identified as the only state-court judge presiding over issues raised in this MDL. (ECF No. 679.) Science Day will be otherwise closed to public and open only to attorneys who have appearances on file with this MDL, as well as their presenting expert (if any), the court, the court staff, the special discovery master, and the mediator;
5. The presentations may be made by the parties' attorneys or experts. The presenters will not be questioned by each other or opposing counsel. The court, the special discovery master, the mediator, and any state court judge in attendance will have the opportunity to ask questions of the presenters as the court deems appropriate. Nothing in this paragraph should be read to mean that the parties are required to present with an expert. The Federal Rules of Evidence will not be enforced during Science Day, including during the presentations by or questioning of any expert;
6. The participation of any expert or other witness in Science Day shall not be an independent basis for subjecting the expert to discovery and shall not waive any consulting expert privilege. No party shall conduct discovery of the presenting experts regarding their presentations or Science Day itself, whether or not later designated as a testifying expert;

7. Science Day will be conducted in open court, but the proceeding is intended to be informal and any expert will not be placed under oath;
8. The format will be lecture-style presentations that may incorporate the use of PowerPoint presentations or other demonstrative aids. The parties' attorneys will be allowed to lead the experts through a modified direct examination format to focus the presentation;
9. The transcript, PowerPoint presentations, other demonstrative aides, or any statement or presentation by any expert or counsel during Science Day shall not be: discoverable; admissible; used in any fashion for impeachment, cross-examination, or for collateral attack on any presenter, expert, or other witness; shared beyond the counsel of record in this litigation and their staff; attached to any public filing; or used for any purpose other than for the court's benefit to gather knowledge informally at Science Day about the devices at issue in this case;
10. The total length of time that will be allotted to Science Day shall be approximately 5 hours, combined for both MDLs, not including the time for any questions the court has after the parties' presentations, and shall proceed in accordance with the agenda submitted by the parties, which is subject to change by the court; and
11. Any objections to or suggestions for amendment of this order shall be filed on or before August 24, 2022.

**IT IS SO ORDERED.**

/s/ JOY FLOWERS CONTI

Joy Flowers Conti  
Senior United States District Judge